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IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 970

RICHTER'S BAKERY, *Petitioner*

*Vs.*

NATIONAL LABOR RELATIONS BOARD, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT  
AND BRIEF IN SUPPORT THEREOF

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TO THE HONORABLE CHIEF JUSTICE AND  
ASSOCIATE JUSTICES OF THE SUPREME  
COURT OF THE UNITED STATES:

Richter's Bakery, a Texas corporation, respectfully petitions this honorable court for a writ of certiorari to review the judgment and decree of the United States Circuit Court of Appeals for the Fifth Circuit enforcing an order of the National Labor Relations Board against it.

## STATEMENT

This is an original proceeding filed by the National Labor Relations Board to enforce an order issued by it against this petitioner on August 24, 1942 (R. 161).

Petitioner is and was at all of the times involved engaged in the manufacture, sale, and distribution of bread and rolls in San Antonio, Texas, and its trade

territory wholly within the State of Texas. Its products are consumed locally and none of them is supplied, delivered or transported in interstate commerce. A part of the raw materials which it uses come from sources outside the State of Texas.

Petitioner contended in the proceedings before the Board and in the Circuit Court of Appeals and here contends that it is not subject to the National Labor Relations Act (Act of July 5, 1935, C. 372, 49 Stat. 449, 29 U. S. C. 151 et seq.)

The opinion of the Circuit Court of Appeals was delivered February 8, 1944 (R. 223) and judgment enforcing the Board's order was rendered that day as reflected by the minutes of the Court (R. 229) Petition for rehearing was filed February 28, 1944 (R. 230) and denied on March 1, 1944 (R. 235) The decree was entered March 14, 1944 (R. 235)

## **BASIS OF JURISDICTION OF THIS COURT**

It is contended that this court has jurisdiction to review the aforesaid judgment and decree under Section 240 of the Judicial Code as amended (28 U. S. C. 347).

## **THE QUESTIONS PRESENTED**

The questions presented are:

1. Whether the Court below erred in not holding that the labor relations of petitioner are beyond the power of Congress to regulate.
2. Whether the Court below erred in holding that

by the mere fact that petitioner used materials that came from outside the State of Texas in an amount in excess of that to which courts would apply the maxim *de minimis* petitioner was made subject to the National Labor Relations Act.

3. Whether the Court below erred in applying the maxim *de minimis*.

4. Whether the Court below erred in not holding that the applicability of the Act to petitioner is dependent upon a showing that there was such a *close* and *substantial* relation between the business of petitioner and interstate commerce as to bring petitioner within the scope of federal regulation under the National Labor Relations Act.

5. Whether the court below erred in not holding that the business of petitioner did not affect interstate commerce within the meaning of the National Labor Relations Act, there being no showing that there was a *close* and *substantial* relation between the business of petitioner and interstate commerce.

### REASONS FOR GRANTING THE WRIT

The Circuit Court of Appeals has decided a federal question in a way probably in conflict with applicable decisions of this Court. The questions presented are of great importance to the vast body of intrastate businesses which draw on sources outside of the state in which they operate for a part of the commodities with which they deal.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued herein to the United States Circuit Court of Appeals for the Fifth Circuit; that upon a review of the judgment and decree of said court the same be reversed; and that it be granted such other and further relief as in the premises may be necessary or proper.

RICHTER'S BAKERY, *Petitioner*  
J. C. HALL,  
A. V. KNIGHT,  
KARL H. MUELLER,

By \_\_\_\_\_  
*Attorneys for Petitioner.*

No. \_\_\_\_\_

IN THE

## SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

RICHTER'S BAKERY, *Petitioner*

Vs.

NATIONAL LABOR RELATIONS BOARD, *Respondent*BRIEF IN SUPPORT OF PETITION FOR  
WRIT OF CERTIORARI**Subject Index and Table of Cases**

A subject index covering this brief and a table of cases precede the foregoing petition for writ of certiorari.

**The Opinion Below**

The opinion of the Circuit Court of Appeals which was handed down on February 8, 1944, is reported in 140 F. 2d 870 (Advance Sheets, April 17, 1944) and is printed in the record herein (R. 223).<sup>1</sup>

**Jurisdiction**

The statutory provision which is believed to sustain the jurisdiction of this court is Section 240 of the Judicial Code, as amended (28 U. S. C. 347).

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<sup>1</sup>The certified record of the Circuit Court of Appeals filed herein consists of Volume I Transcript of Record which will be referred to as (R. ....); Appendix to Petitioner's (Board's) Brief and Appendix to Respondent's (Richter's) Brief which will be referred to as (B. A. ....) and (R. A. ....), respectively.

The cases believed to sustain said jurisdiction are as follows:

*National Labor Relations Board v. Jones & Laughlin Steel Corporation*, 301 U. S. 1; 57 S. Ct 615; 81 L. Ed. 893, and companion cases.

### Statement

The facts material to the consideration of the questions presented are these:

Petitioner is a Texas corporation, engaged in San Antonio, Texas, in the manufacture of bread and rolls (B. A. 21, 38). All of its products were and are sold and consumed locally and wholly within the State of Texas (R. A. 11). During the year ending February 28, 1942, petitioner used raw materials aggregating in value \$236,968.18 of which more than 25 percent valued at \$60,150.13 came from sources outside the state (B. A. 19-20, 304-307). The volume of out of state purchases had decreased to 11 or 12 percent by April 27, 1942 (R. A. 37-38). Out of state purchases were made either from a local salesman or broker for the seller. Petitioner did not transport any of the commodities so purchased (R. A. 15).

The National Labor Relations Board contended that petitioner's business together with certain other business constituted a "single integrated enterprise". However, that inference and contention did not contribute to the decision of the court below and it expressed no opinion with respect to it (R. 225).



### Specification of Error to Be Urged

If this Court issues the writ of certiorari to review the judgment and decree below, it will be urged that the Circuit Court of Appeals erred in the following respects:

(1) In not holding that the labor relations of petitioner are beyond the power of Congress to regulate.

(2) In holding that by the mere fact that petitioner used materials that came from outside the State of Texas in an amount in excess of that to which courts would apply the maxim de minimis petitioner was made subject to the National Labor Relations Act.

(3) In applying the maxim de minimis.

(4) In not holding that the applicability of the Act to petitioner is dependent upon a showing that there was such a *close* and *substantial* relation between the business of petitioner and interstate commerce as to bring petitioner within the scope of federal regulation under the National Labor Relations Act.

(5) In not holding that the business of petitioner did not affect interstate commerce within the meaning of the National Labor Relations Act, there being no showing that there was a *close* and *substantial* relation between the business of petitioner and interstate commerce.

## Argument

Petitioner respectfully contends that the holding of the Circuit Court of Appeals is in conflict with the following principles enunciated by this court which rule the questions here presented:

The distinction between direct and indirect effects of intrastate transactions upon interstate commerce must be recognized as a fundamental one, essential to the maintenance of our constitutional system, otherwise there would be virtually no limit to the Federal power, and for all practical purposes we should have a completely centralized government.

*A. L. A. Schechter Poultry Corporation v. United States of America*, 295 U. S. 495, 79 L. Ed. 1570, 55 S. Ct. 837.

If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the Federal authority would embrace practically all the activities of the people; and the authority of the State over its domestic concerns would exist only by sufferance of the Federal government.

*Schechter v. United States of America, supra.*

The authority of the Federal Government may not be pushed to such an extreme as to destroy the distinction, which the commerce clause itself establishes, between commerce "among the several states" and the internal concerns of a State. The distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our Federal system.

*National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 81 L. Ed. 893, 57 S. Ct. 615.

Although activities may be intrastate in character when separately considered, if they have such a *close and substantial* relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control.

*National Labor Relations Board v. Jones & Laughlin Steel, Corp.*, *supra*.

Where federal control is sought to be exercised over activities which separately considered are intrastate, it must appear that there is a *close and substantial* relation to interstate commerce in order to justify federal intervention for its protection. The expansion of enterprise has vastly increased the interests of interstate commerce but the constitutional differentiation still obtains.

*Santa Cruz Fruit Packing Company v. National Labor Relations Board*, 303 U. S. 453, 466, 82 L. Ed. 955, 960, 58 S. Ct. 656.

The material jurisdictional facts are uncontroverted. Petitioner is engaged in a purely local intrastate business. No interstate business is directly dependent upon it. The only way in which it could affect interstate commerce would be indirectly in connection with its purchases from time to time of some commodities which move to it in interstate commerce.

There is no evidence to show or from which it can be inferred that the relation of petitioner's business to interstate commerce is close or substantial. It is re-

spectfully contended that such a showing is a condition precedent to holding petitioner's labor relations subject to federal regulation under the National Labor Relations Act.

The court below in holding petitioner subject to the Act because its out of state purchases exceeded a few dollars has erroneously sought to substitute the rule of *de minimis* for the test of closeness and substantiality. The maxim *de minimis* is applicable to cases involving businesses engaged in interstate commerce. It is not applicable to purely local intrastate businesses such as petitioner's.

Petitioner's relation to interstate commerce is no different from that of thousands upon thousands of local industries and business enterprises. It would be difficult if not impossible to find any purely local business that does not make out of state purchases of one kind or another in an amount in excess of that to which the courts would apply the maxim *de minimis*. It is manifest that if the holding of the Court below were permitted to stand the National Labor Relations Board would have jurisdiction over every corner grocery and every general store at the forks of the creek from the Atlantic to the Pacific. The distinction which this court has said is fundamental and essential to the maintenance of our constitutional system would be destroyed. There would be virtually no limit to the Federal power, and for all practical purposes we would have a completely centralized government all in contravention of the constitution and the decisions of this court.

It is respectfully submitted that the questions here involved are of such far-reaching effect and importance that this Court should issue the writ of certiorari and review and reverse the decision of the Court below.

J. C. HALL,  
A. V. KNIGHT,  
KARL H. MUELLER,  
*Attorneys for Petitioner.*